



NORTHERN
TERRITORY
DIVISION

6 October 2016
Dr Bill Freeland, Chair
Northern Territory Environment Protection Authority
GPO Box 3675
DARWIN NT 0801

Via email: ntepa.consult@nt.gov.au

Dear Dr Freeland

Bill

Feedback on *Draft Advice Regarding Dr Allan Hawke's Review of the Northern Territory's Environmental Assessment and Approval Processes* (prepared by the NT Environment Protection Authority)

The Minerals Council of Australia Northern Territory Division (MCA NT) appreciates the opportunity to provide comment on the recent review by the Northern Territory Environment Protection Authority (NT EPA): *Draft Advice Regarding Dr Allan Hawke's Review of the Northern Territory's Environmental Assessment and Approval Processes* (August 2016).

The MCA is the peak industry organisation representing Australia's exploration, mining and minerals processing industry, nationally and internationally, in its contribution to sustainable development and society. The MCA's strategic objective is to advocate public policy and operational practice for a world-class industry that is safe, profitable, innovative, and environmentally and socially responsible, attuned to its communities' needs and expectations. The MCA NT represents and advocates on behalf of members whose operations and interests are based in the NT, including analysis and guidance on draft government policies affecting the NT minerals sector.

The Australian minerals industry is a strong advocate for efficient and effective environmental regulation. Accordingly, the MCA supports the periodic review and improvement of environmental impact assessment and approval policies and procedures to achieve this. Our industry has experienced a range of frustrations, delays and associated significant costs associated with navigating current NT environmental impact assessment (EIA) and environmental approvals (EA) processes. These include issues with inconsistent application of processes within and between different government departments and implementation of policies, without adequate consultation with industry, including policies with significant negative impacts on the industry. Effective consultation is more likely to result in policies that meet both the government's responsibilities to ensure that development is ecologically sustainable and the industry's need to sustain and grow commercially-viable operations than either no or only limited consultation.

We agree that reform of the current system is necessary and urgent. In our experience, the current system suffers from inconsistency in application of regulations, a lack of transparency in regulatory decisions and requirements, and an increasing tendency toward prescription-based rather than risk-based/outcome-focused processes.

Overview of MCA NT comments

The MCA NT has completed its review of the *Draft Advice Regarding Dr Allan Hawke's Review of the Northern Territory's Environmental Assessment and Approval Processes* ("Draft Advice on Hawke 2")

and has included a summary of its feedback in the NT EPA's Submission Form (Attachment A). Key points are as follows:

1. We do not support the strengthening and increased autonomy proposed for the NT EPA. We consider it a fundamental requirement that the NT EPA be accountable to the government. It is government's responsibility to manage EIA, approvals and subsequent compliance monitoring, and reporting to the public, and to be accountable to the public.
2. We advocate for a return to inclusion of an Environment Protection Division (EPD) within the NT government's environment department, which, subsequent to the August 2016 election, is now the Department of Environment and Natural Resources. The EPD would be responsible for coordinating EIA and preparing an environmental assessment report (EAR) with advice to the Minister for the Environment on whether or not a proposal can be pursued without unacceptable environmental impacts, and, if so, what approval conditions should apply to ensure this outcome.

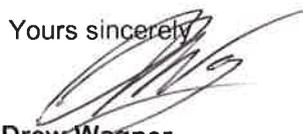
As the EPD would be within a department without a remit for pursuing economic development, we do not believe that conflict of interest issues would interfere with scientifically-sound EIA and environmental approval processes.

3. We strongly support the proposal made in the EPA review that draft approval conditions proposed in an EAR should be subject to review by the proponent and relevant government agencies prior to delivery of the EAR to the Minister. In providing the proponent with an opportunity to consider the proposed approval conditions and negotiate with DENR and other NT government agencies on them, the DENR is more likely to be able to present to the Minister a set of approval conditions that are acceptable by the proponent (and industry) on the basis that they are commercially and logistically feasible; are based on sound risk-assessment; and likely to achieve the required environmental outcomes targeted by the EAR recommendations.
4. Regarding provision of NT government department comments to proponents during the EIA process, we would urge the EPD to collate and review feedback from all government departments, and reconcile differences in advice amongst departments, before providing one set of internally-consistent comments to the proponent. This was the approach the NT government has taken in the past (e.g. Office of Environment and Heritage advice on the EIS for the ConocoPhillips LNG plant at Wickham Point). During this process, the EPD should also vet advice from officers in agencies commenting on matters outside their department's area of expertise, and 'ground truth' such comments with responsible officers in the relevant department.
5. In the absence of a Coordinator General in the NT, we propose that major projects or projects with a range of potentially significant environmental impacts be approved by Cabinet, to ensure that the full suite of relevant criteria that should be considered in an approval, can be considered, i.e. environmental, social, cultural, economic, etc.

The remainder of our feedback is included in the completed NT EPA submission template (Attachment A).

Once again, the MCA NT appreciates the opportunity to provide feedback. Should you have any questions regarding this submission, please do not hesitate to contact me directly on 08 8981 4486.

Yours sincerely



Drew Wagner
Executive Director

Submission Form for Comments and Feedback

Revised Draft Advice: Response to Dr Allan Hawke's Review of NT Assessment and Approval Processes

Submissions close: **Friday 30 September 2016, 5pm** (Extension to 7 Oct granted by Chair, NT EPA, to MCA NT, via email 21 Sept 2016)

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<p>Your comments will be publicly available.</p> <p>Mark the box here <input type="checkbox"/> if you do not want your comments to be made publicly available.</p> <p>Mark the box here <input type="checkbox"/> if you do not want your identity to be made publicly available.</p>			

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
Exec Summary vii	<p>Agree that reform of the current system is necessary and urgent, for a number of reasons, including</p> <ul style="list-style-type: none"> • Inconsistency in application of regulations, • lack of transparency in regulatory decisions and requirements, • increasing tendency toward prescription-based rather than risk-based/outcome-focused processes, • lack of clear delineation between roles of government agencies (in particular DPIR and the NT EPA), • and other reasons identified by the NT EPA in the Exec Summary
viii	<p>Agree that the current environmental approvals system also needs improvement.</p> <p>Agree that EIA and environmental approvals should be coordinated by a single NTG agency/department (e.g. Environment Protection Division [within the DENR] or Coordinator General in DCM), with the NT Minister for the Environment granting Environmental Approvals, with the following caveats:</p> <ul style="list-style-type: none"> • Where expertise to assess particular projects or aspects of the projects is not located in the environment department, that EIA for these should be delegated to the relevant department, e.g. DPIR for mining and agricultural projects; • During the EIA process, the EPD should also vet advice from officers in agencies commenting on matters outside their department's area of expertise, and 'ground truth' such comments with responsible officers in the relevant department; and • Final project approval should be based on a balanced assessment of the full range of relevant criteria and not just environmental (e.g. economic and social benefits; reputation and credentials of the proponent; etc.).

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>Exec Summary (Cont'd)</p> <p>viii</p>	<ul style="list-style-type: none"> • OECD principles are laudable; however, the MCA NT believes that major projects should be approved by Cabinet, because of the importance of a broad range of portfolio issues in the final decision, including environmental, economic, social, cultural and consistency with strategic planning for a particular area, its resources and nearby communities.
<p>viii</p>	<p>Review identifies conflict of interest in a resources department charged with both promoting the industry and regulating it (e.g. compliance, enforcement with regulations): this is the basis for recommending a regulator independent of government.</p> <ul style="list-style-type: none"> • However, an alternative would be to NOT have the environmental consent authority and the development consent authority in the same NTG agency (e.g. environmental approval would be done by the Minister for the environment; and development approval by the Resources Minister, or, better yet, by Cabinet decision or a Coordinator General).
<p>xii</p>	<p>The review indicates that benefits of a single environmental approval include that it would leverage the NT EPA's specialist expertise in making judgement about environmental significance, which is particularly important in small jurisdictions (like the NT), where every sectoral agency cannot have the required environmental experts.</p> <ul style="list-style-type: none"> • However, an equally valid alternative would be to ensure that each sectoral agency has adequate expertise in-house, e.g. environmental expertise in regulating the minerals, agricultural or fisheries sectors. One risk of the proposed model is that the EPA would have GENERALISTS without adequate background to competently identify and assess risk, proposed mitigation measures, etc. • If the NT adopted the model of a more autonomous EPA, then its assessments and recommendations should be limited to those pertinent to the environment, potential impacts and mitigation and not into commercial viability or other non-environmental matters. • Any environmental approval (e.g. by a sectoral agency or EPA) should not comprise a veto over other sectoral approvals that are based on non-environmental criteria (e.g. consistency with long-term NT strategic plans, best use of land amongst competing opportunities, commercial viability, etc.)
<p>xiv-xv</p>	<p>The EPA review proposes 15 major amendments to the EA Act to establish a single environmental approval model.</p> <ul style="list-style-type: none"> • MCA NT recommends proceeding with Option 3 from the Hawke 2 review, to improve current practices, including fewer unnecessary delays in coordinating public and NT government department review.
<p>xv</p>	<p>Amendment 8 indicates that the Minister for the Environment would consult with other ministers and decision-makers, or with whomever they determine concerning the recommended conditions, and subsequently issue an environmental approval to protect the environment from significant impacts. Other decision-makers could then, and only then issue their project-specific, sectoral approvals.</p> <ul style="list-style-type: none"> • There are a number of problems with this recommendation: <ul style="list-style-type: none"> ➤ In preparing its draft recommended conditions, the NT EPA should be consulting and negotiating with relevant sectoral departments and the proponent, to pursue an agreed draft set of conditions prior to the EPA giving these to the Minister for the Environment. <ul style="list-style-type: none"> ○ In most cases it is the departments and not the Ministers that will have the adequate experience and expertise to develop and review conditions. The proposal for the Environment Minister to commence consultation with other ministers <i>after</i> the Minister has received the EAR would unnecessarily delay the approvals process. ○ In addition, the EPA should be consulting with the proponent, so that when the EAR goes public, the recommended conditions have already been through a review and negotiation process to eliminate unrealistic, impractical or other unacceptable conditions comprising 'deal-breakers' for the proponent. ○ Publication of unrealistically stringent conditions without prior consultation with the proponent will expose the proponent and project to serious ideological opposition by anti-development groups that will push for these unacceptable conditions to be adhered to by the proponent. ○ Major projects are LIKELY to have significant environmental impacts; therefore, it is illogical to state that approvals will protect the environment from significant impact. The objective is for approvals to protect the environment from <u>unacceptable</u> impacts

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>Exec Summary (Cont'd) xv</p>	<p>Amendment 9 indicates that the EPA's environmental assessment reports (EARs) and minister's environmental approval and statement of reasons are to be made public.</p> <ul style="list-style-type: none"> The MCA NT has no issue with this, provided the NT EPA has consulted with the proponent in determining the final draft of recommended approval conditions to be put to the Minister, an undertaking stated elsewhere in this review.
<p>xvi</p>	<p>Amendment 12 indicates that project approvals of sectoral agencies (e.g. project approvals under the <i>Mining Management Act</i>) would be required to be consistent with the Minister for the Environment's primary approval and conditions. Sectoral project approvals could include conditions related to less significant environmental impacts.</p> <ul style="list-style-type: none"> As relevant expertise often resides in a sectoral agency, they should be able to propose conditions related to significant environmental impacts if they have that expertise. As proposed in the EPA Review, the MCA NT strongly supports the proposal to share proposed approval conditions in EARs with the proponent and relevant agencies prior to delivery to the Environment Minister, so that they can be revised to ensure they are practical and feasible and also to promote acceptance and commitment by the proponent. <p>Amendment 13 indicates that sectoral agencies would continue to be responsible for developing and enforcing compliance with the conditions of their respective sectoral approvals.</p> <ul style="list-style-type: none"> Sectoral conditions must also be risk- based and scientifically sound, and this will depend on adequately experienced and knowledgeable compliance staff in sectoral departments. <p>Amendment 14 indicates that the proponent would be expected to provide annual compliance reports on implementation of the environmental approval conditions, signed by the CEO or their delegate. <u>These reports are to be made public.</u></p> <ul style="list-style-type: none"> This recommendation could pose a significant risk to the industry if the required level of reporting in annual compliance reports is onerous. <ul style="list-style-type: none"> Annual reporting by exception (e.g. non-compliance or detecting of potentially significant environmental issues) would be more acceptable to industry or, if during the year, the nature of operations varied substantially to that described in EIA documentation, MMPs, etc. MMPs for Tier 1 projects could run to hundreds or thousands of pages; therefore, comprehensive reporting should not be required any more frequently than every 4-5 years, with mandatory annual reports by exception prepared annually. Significant risk if reports are to be made public in their entirety, as this does not accommodate the need to not publish commercial-in-confidence information and would provide an opportunity for vexatious action by those ideologically opposed to mining. Significant risk of delays in turnaround of reports by NT EPA because it has historically been under-resourced, and having to process annual reports from all operators is likely to lead to substantial backlogs in processing, with commercial implications for operators. This has been the case with OHSE matters. <p>The sectoral agency would focus on its core responsibilities (e.g. exploration and industry development) and provide regulatory oversight and management of environmental issues that are not significant, and the specialist, independent environmental regulator, the NT EPA, would focus on regulatory oversight of environmental impacts judged to be significant.</p> <ul style="list-style-type: none"> This text needs rethinking/rewording. Why would the sectoral agency concern itself with overseeing issues "that are not significant" ? And having some issues managed by the NT EPA and some by NT government departments creates uncertainty and would result in inconsistent application and/or duplication of post-approval oversight by government and associated reporting by proponents. Expertise is often in the sectoral agencies and in industry; therefore, a better approach would be to convene small expert advisory groups with members from relevant agencies, industry, independent experts brought in to provide advice to deal with significant environmental matters, such as water quality, contaminated sites, etc. A collaborative approach has worked well in the past, e.g. the Technical Advisory Group on Water Quality convened to oversee a rapid response reactive monitoring program for sentinel marine organisms during construction of the East Arm Port (DENR, Darwin Port Corporation, consultant, Parks & Wildlife, EPA, etc.)

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>Exec summary (Cont'd) xvii</p>	<p>Summary recommendations for improving the environmental management framework:</p> <p>Rec 5 (comprising 6 dot points): The NT EPA should have an enhanced role in providing policy advice to the minister, including development of legislation, statutory implements (instruments?) and guidelines related to its core business (dot point 3).</p> <ul style="list-style-type: none"> • Detail needs to be provided regarding what the documents means by “enhanced role” • MCA NT advises against making the NT EPA more autonomous. <p>• Rec 5 (comprising 6 dot points): The NT EPA should have its public credibility and uncompromised independence enhanced by making it a fully independent authority with the capacity to manage its own finances and staff (dot point 6).</p> <p>MCA NT does not agree:</p> <ul style="list-style-type: none"> • The NT EPA needs to be accountable to the government. It is government’s responsibility to manage EIA, approvals and subsequent compliance monitoring and reporting to the public. • WA had an independent EPA for several years but has returned to a model of having responsibility for coordinating EIA and approvals within a government department. <p>Rec 6: All waste management and pollution legislation should be consolidated into the WMPC Act, to cover all land tenures, and it should be administered by the NT EPA.</p> <p>MCA position:</p> <ul style="list-style-type: none"> • The critical issue is that legislation needs to be developed, revised and/or implemented with regard to the particular characteristics and needs of the mining and other industry sectors. • Is this more likely to be achieved if relevant legislation rests with the sectoral department (e.g. DPIR)? Not necessarily: it depends on the experience and competence of staff in the regulatory sections of NTG departments, or, as is being proposed by the NT EPA document, within the EPA (if adequately resourced) • Whichever model is followed, approval conditions and requirements for monitoring and reporting should be determined on the basis of a competent risk assessment and be outcome-focused rather than prescriptive. <p>Rec 7: Consideration should be given to enhancing the public credibility of the environmental management framework by consolidating the EA Act, the WMPC Act and regulation of other environmental matters (e.g. land clearing, marine pollution) into a single environment protection act.</p> <p>The MCA NT position:</p> <ul style="list-style-type: none"> • For every act rolled into the new ‘super-act’ (The Environment Protection Act), would the expertise to administer the Act have to re-locate to the EPA or DENR? Or would the sections of the Act that relate to particular agency responsibilities continue to be administered by different departments (e.g. heritage matters to be administered by the Department of Tourism and Culture)? ➤ The broader question is “Will consolidating various Acts into the new EP Act reduce red tape, duplication, inefficiencies, costs to implement, or make these things worse?” The MCA NT does not believe it will achieve the government’s objectives for more efficient implementation of the WMPC Act, Water Act and other legislation.
<p>MCA NT overall comment on the Executive Summary</p>	<p>The workability of the proposed amendments to the current frameworks will depend on practical details not yet developed; therefore, the NTG and/or NT EPA should consult with MCA NT and industry at large in amending legislation and administrative procedures to improve current sectoral assessment and approvals processes to meet the objectives stated at the front of the EPA document for improving the EIA and environmental approvals processes in the NT.</p> <p>If the NT government should decide to implement a single, expert, independent assessment and approvals agency, then the MCA NT strongly advocates that</p> <ul style="list-style-type: none"> • Proposals granted Major Project status or those with more extensive and/or more complex environmental issues to address be subject to project approval by Cabinet; and • Proposals with only a limited range of potentially significant environmental impacts that are fairly easily avoided or mitigated be subject to project approval by the relevant sectoral Minister • An arbitration or appeals panel be considered for decisions that are questioned by the proponent or where sectoral agencies do not agree with conclusions reached by the NT EPA.

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>1. INTRODUCTION</p>	
<p>p 20, par 2</p>	<p>“Project decision-makers under sectoral legislation, such as portfolio ministers, would be able to impose additional, complementary conditions of approval <u>about any relevant matters</u> (subject to conditions imposed being consistent with the conditions of the environmental approval).”</p> <ul style="list-style-type: none"> • This is inconsistent with the statement in the Executive Summary (p xvi) that agencies would “provide regulatory oversight and management of environmental <u>issues that are not significant.</u>”
<p>3. LEGISLATIVE REFORM PROPOSED BY HAWKE 2 REVIEW</p> <p>p 52 of Appendix B (referred to in this section)</p>	<p>Regulatory inconsistency is demonstrated by the <u>requirement for publication of</u></p> <ul style="list-style-type: none"> • Licences under the WMPC Act (listed on NT EPA website); • Waste Discharge Licences issues under the Water Act (listed on the NT EPA website); and • Permits and EMPs under the Petroleum Act will soon be listed; <i>however,</i> • <i>Authorisations and mining management plans (MMPs) are NOT published.</i> <p>MCA NT position</p> <ul style="list-style-type: none"> • This comparison is not particularly logical or defensible in comparing (a) the publication of relatively simple and single/few-issue licences and permits involving relatively few pages of documentation with (b) the publication of an <u>entire MMP</u>, which would typically involve hundreds (if not thousands) of pages, covering a comprehensive range of potential environmental impacts addressed through diverse mitigation measures; details on monitoring and reporting; contingency plans; mine closure planning; etc. • It will also subject the MMP review process to vexatious claims and delays by interest groups opposed to mining.
<p>Sec 3.2. Changing roles and responsibilities</p> <p>p 29, Par 2</p>	<p>The independence of the NT EPA’s operational roles and policy provision roles is diminished by staff concurrently or sequentially servicing the EPA role and DENR’s role.</p> <ul style="list-style-type: none"> • Can be resolved by making the NT EPA completely independent from the NTG, with control over its own finances and Staff. (This would also require amendment of the NT EPA Act). <p>The MCA NT does not support augmenting the autonomy and authority of the NT EPA.</p> <ul style="list-style-type: none"> • Instead, greater efficiency, transparency and consistency in EIA and approvals processes should be pursued through <ul style="list-style-type: none"> ➢ Establishment of a central coordinating body or agency (e.g. DCM) for major projects or proposals with potentially significant environmental impacts; and ➢ The use of MOUs between agencies and between agencies and the EPA (as is done in WA); and ➢ Appointment of an NT government Facilitator or Case Manager (as is done in SA) for each proposal to coordinate the completion of required assessments to determine whether or not project approval should be granted.
<p>Sec 3.3 Reform of other Acts; Sec 3.3.1 Reform of the Mining Management Act</p> <p>p 29</p>	<p>Rec 18 provides for minimum performance standards</p> <ul style="list-style-type: none"> • Under a sectoral environmental approval framework, it would lead to sectoral conflict of interest, inequity, not foster sound reporting under bilateral agreements with the Cwth Government nor foster ESD. • Performance standards could be implemented without conflict of interest if they were based on an environmental approval by the Minister for the Environment, with independently enforced environmental conditions relating to significant impacts, but this model is inconsistent with Hawke’s proposed Rec 18. <p>MCA NT position:</p> <ul style="list-style-type: none"> • Does not support performance standards being set by the EPA. Instead, in the first instance Australian Standards should apply. Where there is no relevant standard, then the standard should be set by the agency with appropriate and adequate experience and expertise in setting such standards.

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>Sec 3.3 Reform of other Acts; Sec 3.3.1 Reform of the Mining Management Act (Cont'd)</p> <p>p 29-30</p>	<p>Rec 20 provides for variable periods of approval for MMPs, to reward sound past performance and focus management attention on poorly performing proponents.</p> <ul style="list-style-type: none"> • This would meet objectives of improving the current regulatory system if it were limited to mining matters only or if the recommendation were implemented under an environmental approval by the Minister for the Environment and independently enforced conditions relating to significant environmental effects. • It would not meet the objectives if it included management of significant environmental effects based on the conditions of a sectoral environmental approval. • Inclusion of broader environmental matters in MMPs based only on sectoral consideration and approval does not meet the objectives of the proposed reforms. <p>The EPA description is very confusing, including its reference to variable periods of application for MMPs being allowed only if MMPs deal with 'mining matters only.</p> <ul style="list-style-type: none"> • We believe that the EPA endorses providing variable period of application for MMPs based on past environmental performance, but MMPs would not include non-mining matters or matters associated with potentially significant environmental impacts. These matters would instead be included in EMPs, subject to approval by the Environment Minister, with the independent authority (the EPA) responsible for compliance monitoring. • The document does not provide adequate clarity on the respective functions and content of MMPs vs EMPs and proposes that EMPs that include all relevant matters required in an MMP be accepted by DPIR either in lieu of an MMP or as an MMP (dual function). • MCA NT strongly supports approved application periods for MMPs to be based on prior environmental performance of proponents.
<p>Sec 3.3 Reform of other Acts; Sec 3.3.3 Additional legislative change</p> <p>p 30</p>	<ul style="list-style-type: none"> • Rec 21 of the Hawke review proposes that the WMPC Act be amended to provide a single regulatory basis for waste management and pollution control, regardless of land tenure. • In addition, the NT EPA recommends that waste discharge licensing be removed from the Water Act <p>MCA NT position:</p> <ul style="list-style-type: none"> • As with other proposed changes to NT environmental legislation in the Hawke and EPA reviews, the acceptability of proposed application of the WMPC Act regardless of land tenure, and removal of WDLs from the Water act will depend on how these will operate (i.e. the detail). • The MCA NT does not have any objection in principle to these proposals; however, the proposed changes should be subject to wider industry and community consultation, with a detailed Regulatory Impact Statement for stakeholders to understand implications for their industries and interest groups.
<p>4. THE PROPOSED STRUCTURAL REFORMS</p> <p>4.2 The single environmental approval framework p 33</p>	<p>Dot 3: This option has the NT EPA consulting with the proponent, community and agencies on the draft recommendations and approval conditions prior to submission of the environmental assessment report (EAR) to the Minister for the Environment.</p> <p>MCA NT strongly supports that draft recommendations go to the proponent and relevant agencies but not the public/community, as this will open the process up to vexatious tactics and delays by interest groups opposed to mining.</p> <ul style="list-style-type: none"> • Also recommended is the establishment of an assessment panel to resolve significant matters on which the proponent, agencies and/or NT EPA cannot agree on approval conditions.
<p>4.2.2 An optimised single environmental approval framework</p> <p>p 34</p>	<ul style="list-style-type: none"> • Conflict of interest can be eliminated through incorporating recommended powers and arrangements proposed by the NT EPA, including vesting call-in and associated powers. in the NT EPA rather than the Minister for the Environment; the EPA administering the implementation, monitoring, compliance, enforcement and reporting functions; and the NT EPA retaining administration of the WMPC Act. • Figure 3 illustrates the greatly simplified arrangements for EIA and environmental approvals under the NT EPA's version of the single environmental approval framework. <p>MCA NT does not agree with increased authority and autonomy for the NT EPA, for reasons stated above.</p>

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>4.2.4 Timetable for legislative amendments to establish a single environmental approval framework</p> <p>p 37</p>	<p>To implement a single environmental approval framework is estimated to take 9-12 months, to amend the Environmental Assessment Act and establish new procedures.</p> <p>This seems like an unrealistically short period of time. Amending legislation is a very long process. When new powers and responsibilities need to be re-aligned, including shifting of additional resources from sectoral agencies to the EPA, this would also tend to exceed the proposed 9-12 month timeframe.</p>
<p>4. THE PROPOSED STRUCTURAL REFORMS (Cont'd)</p> <p>4.4 Transition from new sectoral approval framework (Option 3) to a single approval framework (Option 2) p 42</p>	<ul style="list-style-type: none"> The Hawke review suggested immediate implementation of Option 3 (sectoral environmental approval framework) with subsequent transition to Option 2 (single environmental approval framework). The EPA review indicates that this would be an expensive and prolonged approach compared to proceeding with Option 2 now, including having to undo legislative amendments to establish a sectoral approval framework. For this reason, the EPA does not support delaying what it considers a 'readily achieved, optimised single framework' to first pursue Option 3 and then pursue Option 2. <p>MCA NT does not agree with increased authority and autonomy for the NT EPA, for reasons stated above.</p>
<p>5. CONCLUSIONS</p> <p>5.2 Reform of EIA, approval & environmental management processes</p> <p>5.2.1 A single environmental approval p 44</p>	<ul style="list-style-type: none"> NT EPA recommendation 1: Government should, following consultation with industry and the community, consider the urgent implementation of the NT EPA's model for a single environmental approval framework. MCA NT does not support this. NT EPA recommendation 2: A sectoral approval framework should not be implemented, as it cannot be optimised to remove conflicts of interest, inefficiencies and ineffectiveness. MCA NT disagrees. NT EPA recommendation 3: The NT EPA's model for a single environmental approval framework should be implemented to ensure reforms are more efficient, less arduous, less expensive and provide for more certain implementation of a credible model framework than the Hawke review's proposed 'aspirational regime' after implementation of a transitional sectoral approval framework. MCA NT disagrees. <p>Amendment of EA Act is urgent to establish a single approval by the Minister for the Environment, for all significant development projects requiring formal EIA. Additional legislative provisions would be required for</p> <ul style="list-style-type: none"> Implementation of approval conditions; Compliance monitoring; Enforcement; Reporting; and Other matters <p>MCA NT strongly urges the NT government advocate, with other jurisdictions, in Canberra for bilateral agreement on environmental approvals.</p>

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>5. CONCLUSIONS (Cont'd)</p> <p>5.2.2 Provision of an Nol p 44</p>	<p>Amendment of legislation is also required to compel proponents of project with potentially significant environmental impacts to submit an Nol to the NT EPA, rather than requiring the relevant minister to do this.</p> <ul style="list-style-type: none"> • The current system has conflict of interest issues. <p>Agreed. This is just good practice.</p>
<p>5.2.3 Call in powers for Nols p 44</p>	<p>Legislative amendment is also required to empower the NT EPA to require submission of an Nol from a proponent when they have not done so. This is arrangement is in place in WA.</p> <ul style="list-style-type: none"> • Agreed. Lack of such a provision in current legislation allowed a substantial jetty/port structure to be constructed in the Tiwi Islands without any formal EIA, approvals or controls. • In addition, once the EPA has determined the level of assessment for a project (including all of its component parts), based on acceptance of the Nol, the EPA should not be able to increase the scope of requirements without prior negotiation and acceptance by the proponent unless the design of the project has been altered substantially enough by the proponent to increase the potential for significant environmental impacts <ul style="list-style-type: none"> ➤ For example, if the EPA has made its decision that a project will require just one EIS for the entire project, it should not be able to require an EIS to be submitted on component parts, e.g. waste storage/management facilities, desalination plant, etc. ➤ This 'scope creep' by the EPA has resulted in at least one proponent not proceeding with components that would have had significant economic and social benefits to NT communities.
<p>5.2.4 Urgently needed policy P 45</p>	<p>The EPA review indicates the following as urgent for adoption by both the NTG and EPA, "to provide certainty for the EIA process":</p> <ul style="list-style-type: none"> • Identification (definition) of significant environmental impacts (EPA is well advanced in its public and industry consultation on this); • Risk management processes and frameworks; • When is an Nol NOT required; • Content required in an Nol (EPA determined this after public and industry consultation in 2015); and • Content required in an EMP (set by DPIR). <p>Agreed; however, some of these are already settled and being implemented, e.g. content of EMPs and Nols</p>
	<p>NT EPA recommendation 4: The urgent need for comprehensive reform of the EA Act can be met by implementing the recommendations in Appendix E (of the EPA review).</p> <p>Note: there are 89 recommendations in Appendix E.</p> <p>MCA NT comments on key ones are included below.</p>

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
<p>5. CONCLUSIONS (Cont'd)</p> <p>5.3 Roles and governance of the NT EPA</p> <p>5.3.2 EPA recommendations on future EPA roles and governance</p> <p>P 46</p>	<p>NT EPA recommendation 5: The NT EPA should</p> <ul style="list-style-type: none"> • Remain an independent authority with a full-time Chair • Retain its administrative roles in relation to EIA and WMPC • Have an enhanced role in providing policy advice to the Minister (for the Environment), including development of legislation, statutory instruments and guidelines related to its core business • Continue to control the operational activities of the staff provided • Not have its operations compromised by staff being required to concurrently or sequentially perform similar functions for DENR <p>MCA NT agrees with the dot points above but not the following:</p> <ul style="list-style-type: none"> • Have its public credibility and uncompromised independence enhanced by making it a fully independent authority, with the capacity to manage its own finances and staff.
<p>5.4 Reform of other environmental management</p> <p>5.4.1 A single independent authority for Waste Management and Pollution Control (WMPC)(from Hawke review)</p> <p>p 46</p>	<p>The Hawke review advocated having the WMPC Act administered by a line agency rather than the NT EPA; however,</p> <ul style="list-style-type: none"> • not all line agencies have adequate in-house expertise and enabling legislation to effectively oversee and manage requirements (in terms of compliance monitoring, etc.); • allocation of responsibilities to a line agency has conflict of interest issues. <p>Agreed: if in-house expertise is inadequate, which is not necessarily the case in all agencies.</p> <p>NT EPA recommendation 6: All waste management and pollution control legislation should be consolidated into the WMPC Act to cover all land tenures, and it should be administered by the NT EPA.</p> <ul style="list-style-type: none"> • And regulation of waste discharge licensing should be moved from <i>the Water Act</i> to the <i>WMPC Act</i>. <p>Agreed, with usual caveats regarding consultation with industry and proponents to negotiated feasible and mutually-acceptable approval conditions.</p>
<p>5.4.2 NT EPA recommendations on reform of other environmental management (p 47)</p>	<p>NT EPA recommendation 7: Consolidate the EA Act, WMPC Act and regulation of other environmental matters (e.g. land clearing, marine pollution) into a single Environment Protection Act.</p> <p>MCA NT disagrees that this will reduce red tape. Risks regarding enactment of unsuitable legislation would be the same whether individual acts were amended or single acts were consolidated into a single comprehensive act with subsections relating to WMPC, land clearing, etc.)</p>

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
APPENDICES	
<p>APPENDIX B: NT EPA assessment of the Hawke review recommendations</p> <p>APPENDIX C: NT EPA assessment of HAWKE review recommendations against objectives of reforms</p>	<ul style="list-style-type: none"> No MCA NT comment is provided on these two appendices, as the NT EPA's views on the Hawke review recommendations do not have direct relevance to the industry. Instead, MCA comment is provided on APPENDIX E, comprising the 89 changes to the current NT EIA and environmental approval processes and structures recommended by the NT EPA, because if the NTG adopts these, then these will have direct implications to the government's management of environmental matters associated with mineral proposals and projects. Appendix D is just a list of potentially relevant agencies in EIA and approvals frameworks and does not require MCA NT comment.
<p>APPENDIX E: NT EPA Recommendations for an Environment Protection (EP) Act</p> <p>p 98</p>	<ul style="list-style-type: none"> The recommendations are in the form of drafting instructions for a new, comprehensive NT EP Act, integrating the NT Waste Management and Pollution Control Act (WMPC Act), waste discharge licensing authority from <i>the Water Act</i>) and diverse regulations covering other aspects of environmental approvals (e.g. land clearing, litter, etc.) They were compiled by the NT EPA to assist the NTG in reforming the current EIA processes and to implement an environmental approval system consistent with an optimised single environmental approval framework. <p>As there are 89 recommendations, MCA NT comments target those associated with significant opportunities or risks, not already identified above.</p> <ul style="list-style-type: none"> The remainder deal with the 'mechanics' of establishing a new framework for EIA and environmental approvals under a single EIA and approvals process, dealt with above.
<p>Recommendation 1 (= Drafting instruction 1)</p> <p>pp 98-99</p>	<p>The primary objective of the EP Act should be to ensure ecologically sustainable development, achieves by, amongst other things, adopting processes that require impacts to be reduced to 'as low as reasonably practicable (ALARP)' and to be acceptable.</p> <p>An ALARP approach is sensible; however, the term 'acceptable' could be associated with significant risk unless the revamped (and strengthened) NT EPA and DPIR are legally bound to consult and negotiate in good faith to reach mutually acceptable outcomes.</p>
<p>Rec 2</p> <p>P 99</p>	<p>The Act will need to define 'significant impact' and the criteria used to determine a potentially significant impact on the environment.</p> <p>In August 2016, the MCA NT made a submission to the NT EPA on defining 'significant impact.' The NT EPA has not yet released the final version of the guideline; however, the definition needs to reflect risk and likely effectiveness of mitigation measures to be acceptable by the minerals sector.</p>

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
APPENDIX E (Cont'd)	
<p>Rec 13 P 100</p>	<p>The NT EPA may make an assessment decision that an action is unacceptable using information contained in an NOI (with or without additional proponent information) or material submitted during the conduct of an API, or draft EIS or draft SIA, or supplement, or any further information.</p> <ul style="list-style-type: none"> • This is reasonable and this is the current situation. • What is needed, however, is an appeals process to deal with assessments that are contested by a proponent. This provision is included in Rec 88.
<p>Rec 22 p 101</p>	<p>The NT EPA may apply assessment on proponent information in situations where there are likely to be <u>low (but significant) impacts</u>. The environmental impacts and proposed management measures need to be understood. The proponent information will be published by the NT EPA.</p> <p>The term 'low (but significant) impact' needs to be defined, e.g. a significant impact in a very small area (less than 1 ha)?</p>
<p>Rec 40 P 103</p>	<p>A proponent may request that information in a notice of intent, draft EIS, draft SIA, supplement or further information is withheld from publication by the NT EPA. It is the responsibility of the proponent to establish that information should be withheld. Information will only be withheld if it is</p> <ul style="list-style-type: none"> • commercial in confidence; • cultural in confidence (as advised by a land council or the Aboriginal Areas Protection Authority); • subject to legal professional privilege; or • otherwise required to be withheld by law. <p>This is a useful inclusion in legislative reform.</p>
<p>Rec 44 p 104</p>	<p>Regardless of the type of assessment undertaken, the NT EPA is to have powers to:</p> <ul style="list-style-type: none"> • direct a proponent, for the purposes of an environmental assessment, to include third-party peer reviews of one or more (or all) elements of a particular proposal and the proponent's proposed management response. • require the proponent to meet the costs associated with providing such expertise (that is, engagement of external consultants, third-party reviews, establishment of review panels etc.) <p>MCA NT position:</p> <ul style="list-style-type: none"> • These directions need to be justified by the NT EPA, and reasonable (i.e. reflect anticipated environmental risk) • Further, selection of the expert third party should be done jointly or be subject to joint acceptance between the proponent and the EPA, to ensure that both parties have adequate confidence in the consultant to accept their findings.

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
APPENDIX E (Cont'd)	
<p>Rec 53 pp 105-106</p>	<p>The NT EPA may extend consultation timeframes to reflect the complexity of a proposal and the demographics of the impacted/interested community and may require a proponent to develop and implement a public consultation or communications strategy.</p> <p>This is current practice; however, this is another NT EPA decision that should be subject to appeal by the proponent if the NT EPA has not adequately demonstrated the need to extent the consultation period.</p>
<p>Rec 62 p 107</p>	<p>There should be powers for the NT EPA to extend timeframes unilaterally where:</p> <ul style="list-style-type: none"> • the proposal is of such significant impact or public interest that the NT EPA is of the opinion that additional time is required (reasons should be given for forming this opinion); or • insufficient information is provided to enable the NT EPA to make Recommendations; <p>and</p> <ul style="list-style-type: none"> • where agreed in consultation with the proponent. <p>MCA NT position:</p> <ul style="list-style-type: none"> • Agree with third dot point; however, the first two dot points should be subject to an appeal by the proponent. • And reasons for extending timeframes <u>must</u> be given (not 'should' be given)
<p>Rec 64 p 107</p> <p>Rec 65 p 108</p>	<p>The draft environmental approval, or as appropriate draft statement of unacceptability, is to be provided to the proponent and relevant government agencies for comment.</p> <p>Very important omission, between Rec 64 and Rec 65:</p> <p>In Sec 4.3.1, the NT EPA indicated that would consult with the proponent, community and agencies <u>on the draft recommendations and approval conditions</u> in the EPA's draft EAR prior to its being delivered to the Minister for the Environment (for approval).</p> <ul style="list-style-type: none"> • The MCA NT believes it is important to include reference to the ability of the proponent to review and negotiate with the NT EPA and NTG departments on the draft recommended approval conditions prior to delivery of the EAR to the Minister for the Environment. • The public/community should not be able to review draft conditions, for reasons stated above (regarding introducing risk of vexatious appeals and delays)

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
APPENDIX E (Cont'd)	
<p>Rec 71 pp 108-109</p>	<p>The NT EPA may, <u>at the request of the proponent or otherwise</u>:</p> <ul style="list-style-type: none"> • make minor, non-significant amendments to an approval or conditions that may be necessary or desirable to manage the significant environmental impacts <p>or</p> <ul style="list-style-type: none"> • make recommendations to the Minister for the Environment for significant amendment of an approval or conditions. <p>Significant amendments may involve changes of significance such as those caused by a change in the significance of a potential environmental effect of a project.</p> <p>The NT EPA must make a recommendation to the Minister for the Environment on a significant requested change, which may include a decision that additional impact assessment is required. The NT EPA must advise the portfolio minister and the relevant decision makers (e.g. Minister for Resources) of the NT EPA's recommendation for a significant change.</p> <p>MCA NT position:</p> <ul style="list-style-type: none"> • If made at the request of the proponent, no issues. • If the EPA wants to make amendments, it should also inform and discuss with the proponent before publishing its decision. • Decisions should be satisfactorily negotiated between the proponent, the NT EPA and relevant sectoral department, with decisions able to be challenged through an appeals or arbitration mechanism.
<p>Rec 77 p 109</p>	<p>Proponents are to provide the NT EPA with a publicly available annual report on compliance with approval conditions and the environmental outcomes associated with their implementation.</p> <p>MCA NT position:</p> <p>The scope of this annual reporting is reasonable and does not suggest commercial-in-confidence material needs to be published.</p>

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
APPENDIX E (Cont'd)	
<p>Rec 83 pp 110-111</p>	<ul style="list-style-type: none"> • Provisions are to be included in the Act to enable guidance material and standards to be developed and published by the NT EPA. • Guidance material is not to be enforceable; standards are to be enforceable. (i.e. it is to be an offence to fail to comply with the requirements specified in a standard.) • Guidance material will provide additional information and assist decision makers and proponents to understand the environmental assessment process, when an assessment may be required and the level of assessment that may be required. • Examples of guidance material that may be developed include generic guidelines for an EIS for acid metalliferous drainage or the NT EPA's expectations in relation to community consultation. • Standards will be used to specify matters that may change over time but for which a level of enforcement is required; for example, a standard may specify when referral of a proposal is (or is not) required. • Standards will be developed with industry and public consultation and specified by notice in the Gazette <p>The NT EPA or minister may adopt guidelines or standards by reference. For example, if another jurisdiction has developed assessment requirements for a particular industry, the NT EPA may wish to adopt those requirements rather than developing new requirements.</p> <p>MCA NT position:</p> <ul style="list-style-type: none"> • Useful to state explicitly the difference between a guideline and standard. • The MCA NT expects the NT EPA to adhere to its undertaking to conduct full industry and public consultation, with adequate timeframes for effective consultation. • The MCA NT supports adopting/adapting models from other jurisdictions when these are relevant to mineral operations in the NT, e.g. WA has a number of informed and practical policies and guidelines developed after extensive consultation with the minerals sector
<p>Rec 88 p 111</p>	<p>The Act should provide for appeals directed to the Northern Territory Civil and Administrative Tribunal.</p> <ul style="list-style-type: none"> • Appeals should be on decisions made by the NT EPA during the assessment process, e.g. a decision that assessment is required and the level of the assessment and also on decisions made by the Minister for the Environment, e.g. in relation to conditions on an environmental approval. • There should not be the opportunity to appeal the information provided in an assessment report or adequacy report. <p>MCA NT position:</p> <ul style="list-style-type: none"> • Strongly agree that there should be an appeals process regarding decisions by the NT EPA during both the assessment and approvals processes. • Do NOT agree that proponents should NOT be able to appeal information in the environmental assessment report (EAR) or adequacy report, e.g. <ul style="list-style-type: none"> ➢ The EAR might have stated a conclusion based on unjustifiable assumptions or misinterpretation of material in an EIS or other assessment document; or ➢ The Adequacy Report might judge an assessment document as being inadequate, based on unjustifiable assumptions or misinterpretation. <p>In both cases the proponent should be able to appeal or contest content in these reports.</p>

Section & Page	Comment [EPA Review text in black; MCA NT comment in brown]
APPENDIX E (Cont'd)	
<p>Rec 89 p 111</p>	<p>The NT EPA is to be able to charge fees for the environmental assessment and approval process. Fees are to be separately chargeable for each step of the process (e.g. developing or amending terms of reference, preparing the assessment report). If a proponent submits a variation, or other changes to information, that results in the NT EPA being required to reconsider a decision or redraft terms of reference then such costs should be separately chargeable.</p> <p>For certainty, it is proposed that cost recovery provisions apply to the entire project life cycle, from referral to final approval and including any amendments to the approval. Cost recovery processes under the EPBC Act, <i>Environment Protection Act 1994</i> (Queensland) and <i>State Development and Public Works Organisation Act 1971</i> (Queensland) should be considered.</p> <p>MCA NT position:</p> <ul style="list-style-type: none"> • We do not support an open-ended cost-recovery system that puts proponents in a situation in which they do not know how much charges are likely to be, particularly if fees are chargeable for each step of EIA, approvals and post-approval regulatory requirements. <ul style="list-style-type: none"> ➢ The sector already pays substantial taxes, royalties, bonds, etc., and EIA, approvals and post-approval oversight/management of mineral operations should be considered core business for government and not subject to fee-for-service arrangements. ➢ If, however, the NTG implements a cost-recovery model, then its fees and rates should be published or provided to each proponent and should be negotiable with the proponent (e.g. lower rates and charges for operators with a proven record of effective environmental management and compliance with approval conditions. ➢ Fees should be reasonable and reflect the nature and extent of environmental risk associated with the project, e.g. scope of works for a third-party assessment or analysis required by the NTG or NT EPA.

Please complete the form and send it via one of the following by no later than Friday 30 September 5pm: [\[Deadline extended to 7 October, by B Freeland\]](#)

Email: NTEPA.Consult@nt.gov.au

Post: NT EPA, GPO Box 3675, Darwin NT, 0801

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